CHEN SOON LEE v. CHONG VOON PIN & ORS.

[O.C.J. (Lee Hun Hoe J.) June 13, 1966]

[Miri.— Civil Suit No. K/35/65]

Negligence — Teachers — Duty of, to pupils taken on picnic — Duty of care.

This was an action for damages for negligence. The defendants were the principal and two teachers at a school and they had gone with some students of the school for a picnic by the sea. While the students were playing a ball game in waist deep water, some of them apparently moved to a depression and found themselves in difficulty. The teachers and some boys came to their assistance but it was found that one of the students was missing. Later she was found but artificial respiration failed to revive her and she died. The action was brought by the administrator of the deceased student.

Held: (1) in this case the principal and the teachers owed no duty to the deceased or her father to provide supervision;

(2) even assuming that the principal and the teachers owed such a duty, they had done all they possibly could to ensure the safety of the students and the action must therefore be dismissed.

Cases referred to:—

(1) *Donoghue* v. *Stevenson* [1932] A.C. 580.

(2) *Bolton* v. *Stone* [1951] 1 All E.R. 1078.

(3) *Brown* v. *National Coal Board* [1962] 1 All E.R. 81, 89.

(4) *Wright* v. *Cheshire County Council* [1952] 1 All E.R. 789.

(5) *Rich & Anor.* v. *London County Council* [1953] 2 All E.R. 376.

(6) *Wray* v. *Essex County Council* [1936] 3 All E.R. 97.

(7) *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.* [1956] 1 All E.R. 385.

(8) *Camkin* v. *Bishop* [1941] 2 All E.R. 713.

(9) *Williams* v. *Eady* (1893), 10 T.L.R. 41.

(10) *Mersey Docks and Harbour Board* v. *Proctor* [1923] A.C. 253 at p. 262.

(11) *Wakelin* v. *London South Western Rly. Co.* 12 App. Cas. 41, 44.

CIVIL SUIT.

J. V. Nayar for the plaintiff.

Stephen Yong for the defendants.

Cur. Adv. Vult.

Lee Hun Hoe J. (delivered by Silke J.): This is an action by an administrator for damages for negligence. The 1st defendant was the principal of Chung San School, Riam Road, Miri. The 2nd and 3rd defendants were teachers in the same school. Plaintiff alleged that because defendants were negligent his daughter, Piek Leng met her death.

On 6th December, 1964, a Sunday, a party of 53 students with 7 teachers of the said school went on a picnic to Tanjong Lobang. In the afternoon deceased and her friends were playing a ball game in waist deep water when some of them apparently moved into what appeared to be a depression. They found themselves in difficulty. The teachers and some boys came to their assistance. Later it was found that deceased was missing. A search was carried out and deceased was found in very shallow water. Artificial respiration failed to revive her and she died that day.

Tanjong Lobang seems to be a well known spot in Miri and a popular picnic spot. On the day in question some Malay students from another school were also picnicking there. In fact for many years not only students from Chung San School but other schools had their picnics there.

Chen Soon Lee (P.W.1), the deceased's father said that deceased did not tell him about going to the picnic but had informed other members of the family. As a result of her death he had lost her services and had spent considerable sum of money for the funeral.

Chai Tung Poh (P.W.2), the chairman of the Chung San School board of management said that the teachers did not inform the board about taking the children to the picnic. He said the board did not give the principal the right to take children to picnic. He said that if the principal wanted to take the children out of school he had to get permission from the board even on Sunday. At the outset I must say I am not impressed by this witness. He appeared rather evasive in various matters when questioned and kept on referring to certain written rules of the board. When he was asked to produce the rules he was unable to do so as there were in fact no such rules.

Bong Ching Miaw (P.W.3), a supervisor of the said school, said that if the teachers wanted to take children to a picnic or outing they had to inform the board in writing. But he admitted during cross-examination that there was no such rule that teachers had to obtain permission to take children to picnic on Sundays or holidays. This witness is more impressive than P.W.2. However he made no mention to any written rules governing the conduct of teachers.

Chong Yuen Fah (P.W.6) is now studying in Miri Secondary School. She was previously a student in Chung San School. She was one of the students who went to that unfortunate picnic. She was playing a ball game with deceased and other girls. They were standing in a circle and they threw the ball from one to another. The 2nd defendant taught them how to play. The water was only waist deep. After teaching them he went on to teach another group of students. Suddenly a big wash came and she fell down. They shouted for help. She was pulled up by a boy and helped to the beach. There she saw the teachers and other boys helping the other girls. Someone then made inquiry

if all had come up. She mentioned that deceased had not. A search was made and deceased was found.

During cross-examination she mentioned that in 1963 she was also in the 6th year in Chung San School. She repeated the 6th year in 1964. She said in 1963 there was a similar picnic for the 6th year students at the same spot. She also played in the water. She went on to say that the picnic was arranged by the teachers in response to the request of the students. Each student was given a copy of a circular giving various instructions and information. She gave evidence well and her manner pleasing. I think her evidence assists the defence rather than the plaintiff.

According to 1st defendant the students of the 6th year made a request through their form teachers to have a picnic at Tanjong Lobang and he approved. He issued a circular to every student. Of twelve teachers in the school six decided to join the students. The students were divided into three groups. Two teachers were assigned to each group. When the students assembled at the beach at Tanjong Lobang all the teachers were jointly responsible for all the students with the 1st defendant in overall control. Before lunch there was a roll call. After lunch they had a rest. Shortly after 1 p.m. they went to play in the water. The teachers went in first followed by the students. Later over ten students decided to go swimming in a fresh water swimming pool a short distance away. First defendant instructed three teachers to accompany the students there as the water in the pool was considerably deeper. There were thus four teachers (including 1st defendant) left to look after those at Tanjong Lobang. The three teachers were most of the time standing some distance apart in a line in the deeper part with the 1st defendant slightly farther away in front of the teachers. They were thus in pyramid formation.

I accept as a fact that the students were playing a ball game in waist deep water. At the beginning the teachers showed them how to play the game. Then they kept watch from the positions I mentioned previously. The object would seem to be to prevent students moving to the deeper part. According to 1st defendant the students moved gradually as they were playing the ball to the left. The teachers following the move. Suddenly more than ten students appeared to be struggling as if there was an area of depression in that part. The teachers and 1st defendant went to the spot and got the students out of difficulty. One of the students was 1st defendant's daughter. As a result of information from Chong Yuen Fah (P.W.6) it was realised that deceased was missing. A search was made in the area. Eventually Chen Chiok Ming, a teacher (D.W.4) found deceased in water of over one foot deep. Artificial respiration failed to revive her and she died.

Second and third defendants corroborated the evidence of 1st defendant substantially. Both had been to almost every picnic organised for the students in the past while at the said school. third defendant had the distinction of attending a picnic while a student in said school where he latter became a teacher. After leaving Miri Krokop School where he taught for some ten years Chen Chiok Ming (D.W.4) joined Chung San School in 1963. While at Miri Krokop School he had also on many occasions taken students to Tanjong Lobang for picnic. In 1963 he also joined the Chung San School picnic at Tanjong Lobang.

The defence witnesses mentioned that there were small waves but none remember any particularly big wave. P.W.6 referred to a big wave when she fell down. It was possible that the sudden drop of the seabed causing a depression gave her the impression of a big wave coming over her. I accept the evidence of the defence witnesses where they conflict with the evidence of the students.

Mr. Yong referred to the famous words of Lord Atkin in *Donoghue* v. *Stevenson* [1] as quoted by Lord Porter in *Bolton* v. *Stone* [2] (at p. 1081):

> "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour."

Lord Porter then went on to say:

> "It is not enough that the event should be such as can reasonably be foreseen. The further result that the injury is likely to follow must also be such as a reasonable man would contemplate before he can be convicted of actionable negligence. Nor is the remote possibility to lead a reasonable man to anticipate it. The existence of some risk is an ordinary incident of life, even when all due care has been, as it must be, taken."

Lord Denning in his judgment in *Brown* v. *National Coal Board* [3] after considering that the Coal Mines Act, 1911 and Factories Act, 1937 imposed a higher duty than was imposed by the common law then stated:

> "for the common law does not require a man to provide security against a *possible* cause of injury, even though it is foreseeable."

The defence adduced evidence to show that for years students from various schools had been having their picnics at the same place and playing in the water in the same area. There was no known depression in the vicinity. The defendants adopted the same kind of supervision as had been done in the past.

In *Wright* v. *Chesire County Council* [4] where some ten boys were engaged in the exercise of vaulting the "buck" and plaintiff was

injured the Court of Appeal allowing the appeal held that defendants were not liable in damages to plaintiff and considered that the test of what was reasonable care in ordinary everyday affairs might well be answered by experience arising from practices adopted generally and followed successfully for many years; and the evidence was that the defendants adopted a generally approved practice; taking into account the nature of the activity in question they had not been shown to have been negligent. In *Rich & Anor.* v. *London County Council* [5] where an infant plaintiff was injured by a piece of coke thrown at him by another boy the Court of Appeal held that the duty owed by the defendants to the boys was to take such care of them as a careful parent would exercise in like circumstances and that their supervision of the boys was adequate and therefore they were not liable to the plaintiff. And in *Wray* v. *Essex County Council* [6] the Court of Appeal held that an oil-can which caused injury to plaintiff was not an inherently dangerous thing and the master was under no duty to take special precautions. In all these cases it would appear that the incidents occurred in premises under the control of defendants. In the present case the incident occurred during school holiday and outside school premises at a picnic arranged at the request of the students themselves. Therefore the question whether defendants owed plaintiff any duty or not become of some importance.

Mr. Yong submitted that there was adequate supervision and that the students were only allowed to play in shallow water. The incident was unfortunate and he further submitted that the depression was in the midst of shallow water and was unforeseeable. Defendants had no knowledge of the depression.

Mr. Nayar submitted that what happened in *Bolton* v. *Stone* [2] was not the same as what happened in the present case. Similarly he submitted that those cases cited by Mr. Yong had no bearing to the present case as they were distinguishable. He then referred to *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.*[7] where appellant, a deck hand while working in a ship at sea fell through an open hatch and was seriously injured. The evidence did not show how the appellant happened to fall. The House of Lords by a majority held the respondents liable and allowed the appeal. The unprotected hatch was held to be an obvious risk and could readily have been avoided despite the fact that evidence of general practice to leave off the 'tween deck hatch covers of holds in grain ship after the holds had been prepared and not to erect guard-rails round the hatches while grain ships in ballast were at sea and that accidents by falling in to such holds were rare. I do not think anyone disputes Mr. Nayar's contention that general practice over a long period necessarily answers a charge of negligence. There the danger was foreseeable and a reasonable man weighing the matters would have clearly considered taking precaution. That is a case of master and servant and different consideration applies. It is important to bear in mind that each case must be decided according to its particular facts.

First, I will consider whether the teachers owed any duty to the deceased or her father to provide supervision for the students. Secondly, assuming that they owed such a duty whether in the circumstances they were negligent.

The picnic was organised at the request of the students themselves. It was on a Sunday and therefore a holiday. The teachers could refuse to accede to the students' request to go to Tanjong Lobang for a picnic. But then the students could have organised the picnic and gone there themselves. But I think the students seemed to be intelligent enough to wish to have the teachers with them. These students though young, should not be treated as Lord Goddard said in *Camkin* v. *Bishop* [8] "as if they were infants at creches and no master is obliged to arrange for constant and perpetual watching out of school hours." The facts in that case were briefly that during their half-holiday, a number of boys from a school were allowed by the headmaster to help a farmer in a field. As a result of a horseplay among some of the boys, the infant plaintiff was struck on the forehead by a clod of earth, and one of his eyes was so badly injured that it had to be removed. In an action for damages for negligence against the headmaster it was contended that he was under a duty to arrange for the supervision of the boys while they were doing the work. It was held that in the circumstances of the case, the headmaster owed no duty to the infant plaintiff or his father to provide for supervision of the boys. Applying that principle to this case I would say that the principal and teachers owed no duty to the deceased or her father to provide supervision. The fact that there was a disastrous and unfortunate result is no reason for throwing the responsibility on the three defendants. There is no evidence to indicate that anyone was aware that the place the students were playing was dangerous.

Now assuming that I am wrong and that the teachers owed such a duty the question would be whether they were negligent on the facts of this case. It has been submitted and I accept it as a correct proposition of law that a schoolmaster's duty towards his pupils is the same as that of a "careful father". In *Williams* v. *Eady* [9] Lord Esher M.R. indicated quite clearly that a master was bound to take such care of his pupils as a careful father would take of his children. I will

therefore apply this standard to the present case. It is a well known principle that a parent is not liable for the negligence of his child unless the child is his servant or agent. He is however liable for his own negligence and is under a duty to exercise such control over his children as a prudent parent would exercise.

However when you look at it the defendants had done all they could to ensure that the students obeyed their instructions. There is no evidence that the students did not follow such instructions. The picnic was organised at the request of the students themselves to their form teachers who obtained permission from the principal. It was therefore for the students' benefit that the picnic was arranged. The principal prepared a circular and each student was given a copy to take home. The students were all in the 6th year. They were divided into three groups. Two teachers were assigned to look after each group. The principal himself was in overall control of the groups. When they reached the beach the teachers had charge of all students with the principal again in overall control. Three teachers were spread out in the deeper part of the water with the principal farther away in front. The object was to prevent students from venturing to the deeper part. Students played game under supervision. The girls were playing a game one would expect normal and healthy girl students to indulge in. There is no evidence that they had gone to play in the deeper part of the water. In fact P.W.6 had said that the teachers had advised them not to go to the deeper part. These students were old enough to understand such warning. There were at the time only 4 teachers (including the principal). They had taken steps to supervise the students and to keep watch over them while they were playing in the water. There is no evidence that there was known danger or trap on that stretch of the beach where the children were playing. The depression was unsuspected.

The teachers had done all they possibly could to ensure the safety of the students. There is no evidence to show that any of the teachers had been at fault or neglected their duty thus causing deceased to get drowned. The amount of supervision required depends on the age of the students and what they were doing at the time. The teachers had done more than was necessary. They kept the students under continuous supervision. There was nothing the teachers, or for that matter any other person, could do to fight against an unfortunate occurrence of circumstances. In my view looking at the facts I am inclined to agree with Mr. Yong that there was adequate supervision. It is difficult to see how such a case could be brought against the three defendanst. Viscount Cave L.C. in his judgment in *Mersey Docks and Harbour Board* v. *Procter* [10] referred to *Wakelin* v. *London South Western Ry. Co.*[11] which mentioned that

> "this House, affirming the Court of Appeal, held that, assuming (but without deciding) that there was negligence on the part of the company, there was no evidence to connect the negligence with the accident, and accordingly that there was no evidence to go to the jury."

Halsbury L.C. stated the principle as follows:—

> "It is incumbent upon the plaintiff in this case to establish by proof that her husband's death has been caused by some negligence of the defendants, some negligence of the defendants, some negligent act, or some negligent omission, to which the injury complained of in this case, the death of the husband is attributable. That is the fact to be proved. If that fact is not proved the plaintiff fails, and if in the absence of direct proof the circumstances which are established are equally consistent with the allegation of the plaintiff as with the denial of the defendants, the plaintiff fails, for the very simple reason that the plaintiff is bound to establish the affirmative of the proposition: *'Ei qui affirmat non ei qui negat incumbit probatio.'*"

I think these expressions apply with equal force in the present case. I sympathise with plaintiff but he has undertaken to prove that defendants are responsible for what happened. I regret that having regard to the evidence I am bound to hold that the plaintiff has not established on the balance of probabilities that defendants were in anyway negligent. This being so, I dismiss his claim with costs to be taxed.

Claim dismissed.

UNITED OVERSEAS BANK LTD. v. SINGAPORE ENGINEERS LTD.

[O.C.J. (Winslow J.) June 17, 1966]

[Singapore — Civil Suit No. 1535 of 1965]

Assignment — Equitable assignment — Letter of authority to transfer.

In this case a company, the Gim Guan Company, wrote to the chairman, Housing and Development Board, as follows:—

> "We hereby authorize you to make all future payments direct to our bankers, the United Chinese Bank Limited, Bonham Building, Chulia Street, Singapore, 1, against bills submitted to you for projects undertaken by us for the board".

This letter was acknowledged by the chairman. The issue raised in this case was whether the letter constituted a valid equitable assignment to the plaintiff bank.

Held: the letter constituted a valid equitable assignment by the company in favour of the bank of all payments due to the company by the Housing and Development Board.

Cases referred to:—

(1) *Bell* v. *London and North-Western Rly. Co.* 51 E.R. 651.

(2) *Crowfoot & Ors.* v. *W.B. Gurney* 131 E.R. 655.

(3) *Yeo Chiang Swee* v. *United Decorators* [1933] M.L.J. 85.